



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 12846851

Date: DEC. 31, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an acrobatic performer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner has a qualifying one-time achievement (a major, internationally recognized award), or that he meets at least three of the ten alternate evidentiary criteria for this classification. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is an acrobatic gymnastics athlete who competed for [redacted] in international competition between 2009 and 2015. Since 2016, he has been employed as an acrobatic performer in several circus arts productions. Currently, he is a member of the cast of [redacted] a live show produced by [redacted] which is in residence at [redacted] in [redacted].

The Director determined that the Petitioner did not establish that he received a major, internationally recognized award under the regulation at 8 C.F.R. § 204.5(h)(3), and therefore must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In denying the petition, the Director determined that the Petitioner satisfied two of the initial evidentiary criteria. Specifically, the Director concluded that the Petitioner met the criteria related to lesser nationally and internationally recognized awards and high salary. *See* 8 C.F.R. § 204.5(h)(3)(i) and (ix). The Director acknowledged the Petitioner's claim that he met the criteria related to membership in an association that requires outstanding achievements at 8 C.F.R. § 204.4(h)(3)(ii), and performing in a leading or critical role for an organization that has a distinguished reputation at 8 C.F.R. § 204.5(h)(3)(viii). However, the Director concluded that the evidence did not demonstrate that he meets either of these criteria.

On appeal, the Petitioner maintains that he has received a major, internationally recognized award in the sport of acrobatic gymnastics and can satisfy the initial evidence requirement based on this award alone. The Petitioner further claims that he meets four of the alternate evidentiary criteria and is otherwise qualified for classification as an individual of extraordinary ability.

After reviewing all the evidence in the record, we conclude that the Petitioner has not established that he garnered a major, internationally recognized award or that he satisfies the requirements of at least three criteria.

A. One-time Achievement

The record demonstrates that the Petitioner received a bronze medal in the [redacted] acrobatic gymnastics event at the [redacted] World Games competition held in [redacted] in [redacted]. The Petitioner contends that the Director erred in failing to recognize this medal as a major, internationally recognized award consistent with 8 C.F.R. § 204.5(h)(3).

The evidence establishes that the World Games competition is officially recognized by the international governing body of the sport of gymnastics (International Gymnastics Federation or FIG). The evidence also demonstrates that acrobatic gymnastics, unlike several other gymnastic disciplines, is not an Olympic sport, and that the World Games (as well as World Championship and World Cup competitions) represent the highest level of international competition in acrobatics.

In determining that the Petitioner did not establish that his bronze medal at the World Games constitutes a qualifying one-time achievement, the Director acknowledged that acrobatic gymnastics is not an Olympic sport. Nevertheless, the Director noted that “USCIS considers a one-time achievement in your field of athletics to be an Olympic Medal.”

On appeal, the Petitioner emphasizes that since acrobatic gymnastics is not an Olympic sport, an Olympic medal is not an applicable example of a major international award in his field, which he maintains is acrobatic gymnastics and not “athletics” in general. The Petitioner argues that, since many athletes are not eligible to compete in the Olympics based on their field, an Olympic medal should not be the only example of a qualifying one-time achievement in athletics.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “[s]uch evidence shall include evidence of a one-time achievement (that is, a major internal[ly] recognized award).” While the regulation does not identify any qualifying award, the House Report specifically cited to the Nobel Prize as an example of a one-time achievement. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.A.N. 6710, 1990 WL 200418 at *6739. We have consistently recognized other examples of a one-time achievement including the Pulitzer Prize, an Academy Award, and an Olympic medal. Further, we must look to Congress’ intent that “admission under this category is to be reserved for that small percentage of individuals who have risen to the very top of their field of endeavor.” *Id.* Thus, consistent with legislative history, a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards.

We note that the selection of Nobel Laureates, the example provided by Congress indicated above, is reported in the top media internationally regardless of the nationality of the awardees, reflects a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized, not just acknowledged within the field as its highest award.

We acknowledge that the Petitioner submitted several major media articles about the World Games, but this evidence does not establish that medals awarded at this event are accorded the same recognition associated with a one-time achievement or major, internationally recognized award. In fact, some the articles indicate the World Games’ lesser recognition or standing. For example, an

article published by *PRI* (pri.org) about the 2009 World Games refers to it as “an obscure sporting event run under the patronage of the Olympic Committee but featuring non-Olympic sports” and notes that the World Games’ motto “The World is Watching,” was “clearly an overstatement or wishful thinking – no U.S. broadcaster picked up the games.” The submitted media articles do not indicate that individual medal winners at the World Games receive broad major media recognition commensurate with that received by winners of Nobel Prizes, Olympic medals, Academy Awards or other major internationally recognized awards. Moreover, the Petitioner did not establish that this international event is recognized by the general public at a similar level.

Therefore, while the Petitioner received a bronze medal at one of the major international competitions in acrobatic gymnastics, he did not establish that receipt of such an award necessarily qualifies as a one-time achievement, nor are we persuaded that the top award in any field qualifies as a one-time achievement. The fact that a major, internationally recognized award, such as an Olympic Medal, may not exist in a specific field does not mean that we should diminish the impressive nature of the one-time achievement and accept a lesser award. In cases where one cannot obtain a one-time achievement, including instances where it is not available in a field, they “can also qualify on the basis of a career of acclaimed work in the field” by satisfying three of the ten categories of evidence. *See* H.R. Rep. at 59 and 8 C.F.R. § 204.5(h)(3). Moreover, awards that may be internationally recognized in the field do not necessarily demonstrate that they are also major or consistent with one-time achievements. In those instances, the regulation at 8 C.F.R. § 204.5(h)(3)(i) allows for a petitioner to submit lesser internationally recognized awards for excellence in the field.

For these reasons, we conclude that the Petitioner has not established that he has received a major, internationally recognized award.

B. Evidentiary Criteria

Because the Petitioner has not established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). As noted, the Petitioner claims that he has submitted evidence to satisfy the criteria related to lesser nationally and internationally recognized awards, membership in an organization that requires outstanding achievements, performing in a critical role for an organization with a distinguished reputation, and commanding a high salary. *See* 8 C.F.R. § 204.5(h)(3)(i), (ii), (viii) and (ix).

Documentation of the individual’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Director concluded that the Petitioner submitted evidence to satisfy this criterion. The record supports this conclusion. In addition to his bronze medal at the [] World Games discussed above, the Petitioner provided evidence that he received bronze and silver medals at the [] European Championship in acrobatic gymnastics, a bronze medal at the [] European Championship, and gold medals at the Sports Acrobatics Championships [] in [], [], [] and []

Documentation of the individual’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as

judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii)

The Petitioner asserts that he meets this criterion as a former member of the [] National Senior Sports Acrobatics Team. A petitioner's participation as a member of a national team may demonstrate eligibility for this criterion, as such teams typically limit their number of members and have a rigorous selection process. It is the Petitioner's burden, however, to demonstrate that he meets every element of a given criterion. We will not assume that every "national team" is sufficiently exclusive and requires outstanding achievements of its members as judged by recognized national or international experts in their fields or disciplines.

Here, the Petitioner provided an attestation from [] Vice President of the [] Gymnastics Federation. [] confirms that the Petitioner was a member of the [] National Senior Sports Acrobatics Team from July 2010 until December 2015 and represented [] internationally in the men's group program. With respect to the team membership requirements, he states:

In order to be included in the [] National Sports Acrobatics Team athletes must, at the minimum, be national champions in at least one program. In order to maintain his or her membership . . . athletes must continue placing first at national sports acrobatics championships and cups.

[The Petitioner] received numerous top place awards at [] national sports acrobatics championship and is a several time sports acrobatics national champion and medalist in the years of [] to []. These awards, as well as his international awards, secured [his] membership in the National Team for the time period specified above.

[] identifies members of the panel of judges at "the [] National Sports Acrobatics Championship where [the Petitioner] competed, secured first places and as a result earned membership in the National Team."

The Petitioner also submitted a letter from [] of the World Olympic Gymnastics Academy, a Latvian native who coaches U.S.-based gymnastics and claims no affiliation with the [] Gymnastics Federation. [] states that "[a]thletes must earn their membership [on a national team] through rigorous selection at national championships" and that the Petitioner "secured his place in the [] National Team when he won gold medals at national championships and cups."

In a request for evidence (RFE), the Director acknowledged the letter from the [] Gymnastics Federation, but determined that the Petitioner had provided "no evidence" that he is a member of an association that requires outstanding achievements of its members as judged by recognized national or international experts in their disciplines. The Director asked that the Petitioner submit additional information, such as the association's constitution or bylaws, noting that the Petitioner must also establish that those responsible for admitting members are recognized national or international experts. In response to the RFE, Petitioner referred the Director to review the letters from [] and []

On appeal, the Petitioner asserts that the Director did not properly weigh these letters or acknowledge that membership on the [] National Sports Acrobatics Team requires outstanding achievements of its members by only accepting national champions in the sport. We note that the Director stated in the denial that “[r]equirements that only include employment or activity in a given field; minimum education, experience or achievement, recommendations by colleagues or current members; or payment of dues do not satisfy this criterion.” The Petitioner correctly notes that he did not claim or provide evidence that his membership on the national team in his sport was based on any of these factors. We also note that the Director’s determination that the Petitioner provided “no evidence” of the requirements for membership was incorrect, given the contents of []’s letter, quoted above, and his position within the [] Gymnastics Federation.

However, the Petitioner relies solely on the above-referenced letters in support of his claim that membership on the team requires an outstanding achievement, i.e., a national championship. Only one of the letters is from a person associated with the sport’s national federation, and neither is sufficiently specific with respect to the national team membership requirements or selection processes. Notably, the record does not contain corroborating evidence, such as a translated copy of the official rules or selection procedures from the bylaws or constitution of the [] Gymnastics Federation, even though the Director specifically requested this type of evidence in the RFE.

Therefore, we conclude that the Petitioner did not submit sufficient evidence to establish that his membership on the [] national team satisfies all elements of this criterion.

Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

The Petitioner claims eligibility under this criterion based on his role as a performer in the [] show.

For a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading. Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities. It is not the title of a petitioner’s role, but rather the performance in the role that determines whether the role is or was critical.¹ The Petitioner’s performance in this role should establish whether the role was critical for the organization or establishment as a whole.

The Petitioner submitted a letter from [] of [] [] production company, who states:

In [] [the Petitioner] performs along with his partners seemingly impossible, gravity-defying feats, exhibiting the strength, flexibility and balance of a world-class acrobatic gymnasts. [The Petitioner’s] act is a jewel of the entire production and it is definitely one of the audience’s most favorite. The image capturing [the Petitioner’s]

¹ USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 10* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

amazing acrobatic routines had been used extensively in show promotions – from billboards across [redacted] to advertisements on city cabs to gigantic screens lighting up [redacted]. As a starring member of the cast, he clearly plays a critical role for the entire production, contributing greatly to the commercial and artistic success of [redacted].

The Petitioner also provided a letter from [redacted], a head coach with [redacted] Entertainment Group, who states that he has seen the Petitioner's performance in [redacted] and "can confirm that he does play a critical role in this show and is a critical member of the show's acrobatic troupe," noting that "the audience always reacts in awe to his performances." Similarly, [redacted] head acrobatics coach with [redacted] states that the Petitioner "has been in the spotlight of the internationally acclaimed [redacted] show," notes that he has seen his performance, and "can attest to his role in this show as in fact critical." [redacted] further states that he performs in a "key, featured act" that "would be impossible without his contribution."

The Director acknowledged this evidence, but found that the letters provided did not provide detailed and probative information that specifically addressed how the Petitioner's role is leading or critical to the extent that he is responsible for an organization's success or standing to a degree consistent with the meaning of "leading or critical." The Director noted that the Petitioner did not submit evidence that distinguished him from other performers in the production and observed that he did not provide any additional evidence in response to the RFE. On appeal, the Petitioner asserts that the submitted letters are sufficient to establish that his role is critical to [redacted] which he refers to as "an artistic venue of distinguished reputation."

The evidence establishes that [redacted] is an acclaimed live production but does not establish that it is an "organization or establishment" as required by 8 C.F.R. § 204.5(h)(3)(v). The Petitioner is remunerated for his services by one of the show's production companies, [redacted]. The Petitioner has not claimed or submitted evidence to establish that he serves in a leading or critical role for this organization as a whole as a member of the acrobatic troupe in one of its productions.

Further, even if we concluded that [redacted] is an "organization or establishment," we agree with the Director's determination that the letter from the show's producer does not contain detailed and probative information that specifically addresses how the Petitioner's performance in his role is leading or critical to the show. [redacted] states that the Petitioner's act is "a jewel of the entire production" and an audience favorite and notes that the act appears in the show's promotional materials. However, the record does not contain, for example, critical reviews mentioning the Petitioner's act or copies of the referenced advertising. We acknowledge his statement that the Petitioner is a "starring member of the cast," but the record does not include evidence that would allow a comparison of the Petitioner's four-person act to that of other performers in the show, such that we could determine that he has a lead role. [redacted] also does not provide any further explanation for his statement that the Petitioner has been "contributing greatly to the commercial and artistic success of [redacted]"

The testimonial evidence establishes that the Petitioner is a talented acrobatic performer whose technical skills are critical to his specific group act in [redacted] but do not establish how this act, or the Petitioner individually, serves in a critical role for the overall production to the extent that his performance is of

significant importance to the outcome of its activities. For these reasons, the Petitioner has not established that he meets this criterion.

Evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

The Director concluded that the Petitioner met this criterion. For the reasons discussed below, we will withdraw that determination.

The Petitioner provided copies of his pay statements and his IRS Form 1099-Misc, Miscellaneous Income, indicating that [REDACTED] a producer of [REDACTED] paid him \$98,240 in 2019.

The Petitioner's Performer Agreement with [REDACTED] indicates that he is paid \$1,000 for each "rehearsal week" (up to six weeks per year) and \$1,800 per "performance week." According to the agreement's terms, a "performance week" includes up to ten performances per week, as well as up to 10 hours of rehearsals, and all pre- and post-show activities required by the producer. The agreement does not identify an hourly rate of pay.

The Petitioner emphasizes that his pay statements show demonstrate that he receives an hourly wage of \$180 and works 10 hours per week. While most of these statements indicate a "show" rate of \$180 and state that he is compensated for 10 hours per week at this rate, as noted, his performer agreement does not identify an hourly rate or indicate that he is paid by the hour. Based on the terms of the agreement, the Petitioner's \$1800 weekly rate requires him to devote significantly more than 10 hours per week to the [REDACTED] production. The record therefore does not support a conclusion that he receives an hourly pay of \$180, nor can we determine his actual hourly pay absent a more detailed breakdown of how many hours he works per week.

The Petitioner provided comparative wage data from several sources in support of his claim that he has commanded a high salary in relation to others in the field. Data from the U.S. Bureau of Labor Statistics (BLS) show that "Entertainers and Performers, Sports and Related Workers, All Other" earned a mean hourly wage of \$21.53, with the top ten percent earning at least \$42.47 per hour, nationally, in 2018. The submitted BLS data also shows that mean wages in [REDACTED] a more appropriate comparison based on the Petitioner's work location, are \$48.95, but the Petitioner did not provide data regarding high wage earners in this geographic area. Nevertheless, for the reasons discussed above, the evidence provided does not clearly identify the Petitioner's hourly wage or the number of hours he works per week.

Information the Petitioner obtained from *Payscale* indicates that the average circus performer earns an annual salary of \$39,548, with the top 10% of earners receiving \$70,000 or more annually in salary and "total pay" as high as \$87,000. However, we note that this data is based on information obtained from only 14 individuals and may not reliably represent industry salaries, particularly in the [REDACTED] metropolitan area where, according to the BLS data discussed above, average hourly wages are more than twice the national average.

The third and final source the Petitioner provided is an article titled "Becoming a Circus Performer" published by the website *KidzWorld* in December 2017. The article features an interview with a

Cirque du Soleil acrobat and dancer who indicates that she is required to work “a lot of long hours and weekends.” The article states that “featured performers like acrobats, contortionists or trapeze artists can make between \$40,000 and \$70,000 a year” but does not cite a source for these figures.

Although the Petitioner emphasizes that an hourly wage provides the most appropriate comparison to others in his occupation, the evidence does not clearly establish what he earns on an hourly basis, or how many hours he works per week. Nor did he provide sufficient evidence that would allow us to compare his wages to those earned by others in similar positions in the same geographic area.

For these reasons, we conclude that the Petitioner has not established that he meets the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.